



Utah Education and Telehealth Network

Federal Communications Commission
44 L Street NE
Washington, DC 20554

December 3, 2021

Chair Jessica Rosenworcel
Commissioner Brenden Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington

Utah Education and Telehealth Network Response to
WC Docket No. 21-455
Promoting Fair and Open Competitive Bidding in the E-Rate Program
Notice of Proposed Rulemaking

The Utah Education and Telehealth Network (UETN) would like to express serious concerns with the “Promoting Fair and Open Competitive Bidding in the E-Rate Program” Notice of Proposed Rulemaking (NPRM) in WC Docket No. 21-455. The NPRM’s proposal would be in direct conflict with Utah state law and the University of Utah’s procurement policies, which UETN must follow. We respectfully ask the Federal Communications Commission (FCC) to abandon this proposal since “service providers and applicants are expected to follow E-Rate program rules, and all applicable state and local procurement rules and regulations.”

Background

Utah law (53B-17-105)¹ assigns responsibility for the state’s educational technology and telehealth infrastructure to UETN. UETN is responsible for providing internet access to all public schools throughout the state of Utah. UETN brings the internet to all public schools throughout the state of Utah. This responsibility comprises over 1,700 schools, libraries, and health clinics. The network has a central fiber-optic backbone with paths branching to every region of the state.

UETN files E-Rate applications for all Category 1 service for all public schools throughout the state of Utah. UETN is a consortium filer for the State of Utah.

Conflicts with State Law and University Procurement Policy

The NPRM proposes to “implement a central document repository (i.e., bidding portal) through which service providers would be required to submit bids to the E-Rate program administrator, the Universal Service Administrative Company (USAC), instead of directly to applicants.”

The FCC seeks comment in Question 20 on whether there are “potential obstacles the Commission should examine, such as conflicts with certain state and local procurement requirements, or other technical challenges program participants may have regarding using a bidding portal for competitive bidding.”

¹ <https://le.utah.gov/xcode/Title53B/Chapter17/53B-17-S105.html>



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UETN's participation in the proposed bidding portal would be a direct violation of Utah state law and University of Utah's procurement Policy.

Utah State Statute (53B-17-104)² assigns administrative management (which includes procurement authority) for UETN to the University of Utah. State Procurement Code (63G-6a-112)³ states that the procurement unit (University of Utah) shall post notice of the solicitation "on the main website for the procurement unit; or on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice."

University of Utah Policy 3-100⁴, "University Procurement" also requires that "The Purchasing Department is responsible for the procurement of supplies and services required by the University of Utah and all its organizational units as required by law." This policy does not allow an exemption that would permit bids to be submitted through the proposed USAC Bidding portal.

The policy also states that "The Responsibilities of the Purchasing Department are to Initiate, conduct and conclude solicitations and negotiations for the purchase of supplies and services for the University." The University Policy (per State Law) only gives authority to the Purchasing Department to conduct and conclude solicitations and negotiations for the purchase of supplies and services for the University. The purchasing department can not relinquish that to another system outside of the purchasing department usage and administrative control.

We appreciate the opportunity to comment on this NPRM and we urge the FCC to abandon this proposal. Requiring UETN to use the bidding portal for its procurement would be in direct conflict with Utah State Law and University Policy.



Sincerely,

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² <https://le.utah.gov/xcode/Title53B/Chapter17/53B-17-S104.html>

³ <https://le.utah.gov/xcode/Title63G/Chapter6A/63G-6a-S112.html>

⁴ <https://regulations.utah.edu/administration/3-100.php>



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